



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0530; FRL-9982-03-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Motor Vehicle Inspection and Maintenance Program and Associated Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of two State Implementation Plan (SIP) revisions submitted by the State of Colorado. The revisions involve amendments to Colorado's Regulation Number 11, "Motor Vehicle Emissions Inspection Program." The revisions enhance the use of Regulation Number 11's Clean Screen Program, allow self-inspecting vehicle fleets to use the On-Board Diagnostics (OBD) testing procedure, provide corrections to the Low Emitter Index (LEI) component of the Clean Screen Program, clarify existing provisions, correct administrative errors, delete obsolete language, establish inspection procedures for when emission control equipment tampering is detected, and make several other minor associated revisions. These actions are being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2018-0530, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, EPA, Region 8, Mail-code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6479, or russ.tim@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Colorado’s Regulation Number 11 (hereafter “Reg. No. 11”) addresses the implementation of the State’s motor vehicle inspection and maintenance (I/M) program. The I/M program consists of an “enhanced” component that utilizes a dynamometer-based EPA IM240¹ test for 1982 and newer light-duty gasoline vehicles and a two-speed idle test (TSI)² for 1981 and older light-duty gasoline vehicles. To improve motorist convenience and reduce program implementation costs, the State also administers a remote sensing-based “Clean Screen” component of the I/M program. Remote sensing is a method for measuring vehicle emissions, while simultaneously photographing the license plate, when a vehicle passes through infrared or ultraviolet beams of light. Owners of vehicles meeting the Clean Screen criteria are notified by the County Clerk that their vehicles have passed the motor vehicle inspection process and are exempt from their next regularly scheduled IM240 test.

The Clean Screen program component of Colorado’s Reg. No. 11 was originally approved, for implementation in the Metro-Denver area, with the Denver carbon monoxide redesignation to attainment and maintenance plan (see: 66 FR 64751, December 14, 2001). The Clean Screen criteria that was approved in 2001 by the EPA required two valid passing remote sensing readings on different days or from different sensors, that met the applicable emissions

¹ See 40 CFR part 51, Subpart S for a complete description of EPA’s IM240 test. The IM240 test is essentially an enhanced motor vehicle emissions test to measure mass tailpipe emissions while the vehicle follows a computer generated driving cycle trace for 240 seconds and while the vehicle is on a dynamometer.

² See 40 CFR part 51, Subpart S for a complete description of EPA’s two-speed idle test. The two-speed idle test essentially measures the mass tailpipe emissions of a stationary vehicle; one reading is at a normal idle of approximately 700 to 800 engine revolutions per minute (RPM) and one reading at 2,500 RPM.

reading requirements in Part F of Reg. No. 11, within a 12-month period to clean-screen a vehicle (see 66 FR 44097, August 22, 2001).

Colorado revised Reg. No. 11 to expand the definition and requirements for a “clean-screened vehicle” to also include vehicles identified as low emitting vehicles in the state-determined LEI which have one passing remote sensing reading prior to the vehicle’s registration renewal date. As part of the LEI process, the Colorado Department of Public Health and Environment, Air Pollution Control Division (APCD) develops an LEI on or before July 1 of each year. The LEI is based on a tabulation of the previous calendar year’s IM240 inspection program results for specific make, model, and model year vehicles that passed IM240 vehicle inspections the previous year at a minimum rate of 98%.

Beginning in January 2015, Colorado also began implementing an OBD test for certain model year vehicles. An OBD I/M test essentially means the electronic retrieval, by connecting an OBD test analyzer to the computer port data link in the vehicle, of information from a vehicle’s computer system. The electronic information retrieved includes stored readiness status, diagnostic trouble codes (DTC), malfunction indicator light (MIL) illumination and other data. If emission related DTCs are present or the MIL is commanded on, that would indicate an emissions related malfunction.³

In addition, Colorado also extended the Reg. No. 11 exemption from I/M testing for new vehicles from 4 years to 7 years. This revision was based on Colorado’s gathering of emissions testing information over a period of several years, which demonstrated that historically new and

³ The EPA required that OBD II testing requirements be in place by January 1, 2002 (66 FR 18156; April 5, 2001). All 1996 and newer model year light duty gasoline and alternate fuel passenger cars and trucks are required to have OBD II systems. OBD-II is an improvement over OBD-I in both capability and standardization. The OBD-II standard specifies the type of diagnostic connector and its pinout, the electrical protocols available, and the messaging format. The OBD-II standard provides a list of standardized DTCs. OBD-II standardization was prompted to simplify diagnosis of increasingly complicated emissions equipment.

newer vehicles typically did not fail the IM240 or OBD emissions test within the first seven years of the vehicle's life.

II. What Action is the Agency Taking?

As explained below, the EPA is proposing to approve various revisions to Colorado's Reg. No. 11 that the State submitted to the EPA on February 20, 2015, and on May 14, 2018. Most of the revisions involve minor updates to several sections of Reg. No. 11 and the deletion of obsolete language. More specifically, the substantive SIP revisions involve:

- a. Addition of a definition of "Tampering" to Part A.II.
- b. Revisions to Part B.IV.B to require span gases to be labelled in accordance with Attachment VI of Appendix A.
- c. Revisions to Part A.II.16 and Part C.XII. (A.3 and C.2) to increase clean screening efficiency by removing the requirement that two qualifying clean screen observations must be made on different days or at different locations.
- d. Revisions to Part C.II.B.4 to remove incomplete and obsolescent qualifying criteria for certain vehicles that are unable to be tested on the IM240 chassis dynamometer.
- e. Revisions to Part C.II.C to allow self-inspecting gasoline vehicle fleets to utilize the more effective and more convenient OBD II testing procedure on all 1996 model year and newer vehicles.
- f. Revisions to Part C.II.C.3 regarding acceptable readiness criteria for OBD sensors and monitors.
- g. Revisions to Part C.II.C.9 and C.10 regarding I/M240 tests and tampering associated with OBD tests.

- h. Revisions to Part C.VIII and IX to clarify and modernize provisions for issuance of emissions repair, diagnostic and economic hardship waivers.
- i. Revisions to Part D.I.B. 5, 6, and 7 to remove obsolete language regarding dwell meters, timing lights, and idle adjustment.
- j. Revisions to Part F.VI.B, the roadside remote sensing clean screen LEI, to allow for greater utilization of this component of the I/M program.
- k. Revisions to Part F.VII with regard to OBD testing criteria.
- l. Revisions to Appendix A, Attachment IV, Section 2.2, and the deletion of Appendix B in its entirety such as to remove obsolete specifications and procedures for vehicle inspection analyzer calibration gasses.
- m. Corrections of typographical, grammatical, and formatting errors throughout Reg. No. 11.

We note that the specific basis for our proposed action and our analyses and findings are discussed in this proposed rulemaking. Technical information that we relied upon in this proposal is contained in the docket, available at <http://www.regulations.gov>, Docket No. EPA–R08–OAR–2018–0530.

III. What Was the State’s Process?

Section 110(a)(2) of the CAA requires that a state provide reasonable notice and public hearing before adopting a SIP revision and submitting it to us.

The State’s February 20, 2015 SIP submittal

On October 16, 2014, the Colorado Air Quality Control Commission (AQCC) conducted a public hearing to consider the adoption of revisions and additions to the Colorado SIP. The revisions affecting the SIP involved the Reg. No. 11 revisions noted above and as discussed below in section IV. There were no public comments. After conducting a public hearing, the

AQCC adopted the proposed revisions to Reg. No 11 on October 16, 2014. The SIP revisions became State effective on November 30, 2014.

We evaluated the State's February 20, 2015 SIP submittal for Reg. No. 11 and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the State's February 20, 2015 submittal was deemed complete on August 20, 2015.

The State's May 14, 2018 SIP submittal

On May 17, 2017, the AQCC conducted a public hearing to consider the adoption of revisions and additions to the Colorado SIP. The revisions affecting the SIP involved the Reg. No. 11 revisions noted above and as discussed below in section V. There were no public comments. After conducting a public hearing, the AQCC adopted the proposed revisions to Reg. No. 11 on May 17, 2017. The SIP revisions became State effective on September 30, 2017.

We evaluated the State's May 14, 2018 SIP submittal for Reg. No. 11 and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. In addition, our evaluation of the SIP revisions submittal also concluded that it met the minimum "completeness" criteria found in 40 CFR part 51, Appendix V.

IV. EPA's Evaluation of the State's 2015 Revisions to Part A, Part B, Part C, Part F, Appendix A and Appendix B

The sections of Reg. No. 11 that were revised with the State's February 20, 2015 submittal were as follows:

1. Part A, section II: Add a new definition number 50, "Tampering." Renumber definitions number 51 and higher. The new definition is consistent with the prohibitions in CAA section 203(a)(3)(A).

2. Part B, section IV: Modify section IV.B to require span gases to be labelled in accordance with Attachment VI of Appendix A and to require span and calibration gas suppliers to be approved by the Colorado Automobile Inspection and Readjustment (AIR) Program Standards Lab.

3. Part C, section II: Modify section II.B.4 to replace specific criteria for eligibility for an alternative test to the IM240 test with an eligibility list that is maintained in the Colorado APCD Emission Technical Center Procedures Manual.

4. Part C, section II: Modify section II.C to indicate that effective July 1, 2015, 1996 and newer light duty vehicles that are owned by a fleet that operates a Fleet Inspection Station shall administer an OBD test as specified in 40 CFR 85.2222.

5. Part C, section VIII: Modify sections VIII.B.1 to require, as part of eligibility for an emissions test waiver, there are no visible smoke emissions from the vehicle's exhaust, there has been no tampering, and VIII.B.3 (renumbered to VIII.B.2) to clarify requirements for expenditures needed to qualify for an emissions test waiver. Remove prior sections VIII.B.2, VIII.B.4, and VIII.B.5. We note that section VIII.B.2 involved certain aspects of the basic I/M program that are obsolete and sections VIII.B.4 and VIII.B.5 contained emissions reduction and operating parameter requirements that are not required under 40 CFR 51.360 for waivers.

6. Part C, section VIII: Modify section VIII.C to require a vehicle to be evaluated via an IM240 test if the OBD MIL remains illuminated even after the maximum expenditure for repairs has been met.

7. Part C, section VIII: Modify section VIII.D.1 to add failure for an OBD test.

8. Part C, section VIII: Modify section VIII.F to remove unnecessary language regarding the generation of an emissions sticker and removal of the prior emissions sticker by an emissions inspector.

9. Part C, section IX: Remove this section in its entirety to delete obsolete language regarding engine and emissions equipment adjustment procedures. These procedures are no longer performed by inspectors; instead, if a vehicle does not pass the owner must have the necessary repairs done before the vehicle is retested.

10. Part C, section X: Modify section X.A and X.B to include provisions for emissions related repairs that are necessary to extinguish the OBD MIL light.

11. Part C, section X: Modify section X.C to state the specific requirements to meet the emissions maximum expenditure for repairs cost limit, with respect to an OBD test, in order for a vehicle to be eligible to apply for a waiver.

12. Part F, section VI: The State modified section VI.B.3 to remove a 98% passing criteria for Clean Screen vehicles and instead indicate the passing criteria would be based on sound scientific evidence. The EPA is not acting on this revision in the State's February 20, 2015 SIP submittal, as it has been superseded by the 2018 revisions.

13. Part F, section VI: The State added section VI.B.4 to include that the State would establish the low emitting vehicle index, without review by the EPA or the public, and would retain the low emitting vehicle index in the State's Emission Technical Center Procedures Manual. The EPA is not acting on this revision in the State's February 20, 2015 SIP submittal, as it has been superseded by the May 14, 2018 submitted revisions.

14. Appendix A, Technical Specifications: Modify section 2.11 to remove a reference to gas blender specifications in the obsolete Appendix B and change to indicate as approved by the Colorado APCD.

15. Appendix A, Technical Specifications, Attachment IV: Modify section IV.2.2 to indicate that the Colorado97 procedure shall use two tri-blend span gas blends that meet the California BAR97 span gas low (blend 31) and high (blend 34) specifications.

16. Appendix A, Technical Specifications, Attachment IV: Modify section IV.2.3 to indicate that audit gases shall meet the California BAR97 audit gas specification.

17. Appendix A, Technical Specifications, Attachment VI: Modify section VI to revise the label figure to indicate that it represents the Colorado-approved calibration span gas.

18. Appendix B, Standards and Specifications for Calibration/Span Gas Suppliers: Appendix B was removed by the State in its entirety as it contained obsolete specifications and procedures for inspection analyzer calibration gases.

V. EPA's Evaluation of the State's 2018 Revisions to Part C, Part D, Part F and Appendix A

The sections of Reg. No. 11 that were revised with the State's May 14, 2018 submittal were as follows:

1. Part C, section II: Modify section II.C.3.a to replace the existing monitor readiness evaluation with a monitor readiness evaluation that ensures that the oxygen sensor and/or heated oxygen sensor monitor(s) shall be ready if supported, the catalyst monitor shall be ready if supported, 2001 and newer vehicles shall only be allowed to have one supported monitor in a not ready status, and 2000 and older vehicles shall only be allowed to have two supported monitors

in a not ready status. In addition, if the above criteria are not met and the vehicle's MIL light is commanded off, then the vehicle will be required to be evaluated via an IM240 test.

2. Part C, section II: Modify section II.C.9 to indicate that for the 5 percent vehicles that are selected at random from the OBD test for a subsequent IM240 test, the IM240 test shall be the pass/fail determination for these vehicles.

3. Part C, section II: New section II.C.10 that states if the vehicle's OBD responds that the catalyst readiness monitor is not supported and that all readiness monitors are supported, or if any other OBD tampering indicators are present, then the OBD test will be failed.

4. Part D, section I: Modify sections I.B to remove sections I.B.5, I.B.6 and I.B.7 to delete obsolete terms and renumber the remaining sections in I.B.

5. Part D, section I: Modify renumbered section I.B.10 to indicate that renumbered sections I.B.5 and I.B.6 are not required for licensing as an inspection-only station or inspection-only facility.

6. Part D, section I: Remove prior numbered section I.B.15 as it contains obsolete language.

7. Part F, section VI: Modify section VI.B.1 to remove the restricting term "IM240" which then allows all types of test results to be evaluated.

8. Part F, section VI: Modify section VI.B.2 to remove the unnecessary term "exhaust."

9. Part F, section VI: Modify section VI.B.3 to remove the minimum 98% passing rate criteria for the LEI and instead require that the passing rate criteria ensures equivalent air quality benefits as a second remote sensing test.

10. Part F, section VI: Modify section VI.B.4 to remove prior language and to add that the passing rate criteria for the LEI, as established by the APCD, will be maintained and contained in

the APCD's Emissions Technical Center Procedures Manual, and will be submitted to the EPA on or before July 1 of each year.

11. Part F, section VII: Modify section VII to remove the obsolete sections VII.E and VII.F.

12. Appendix A, Technical Specifications, Attachment V: Modify Attachment V "Specifications for Colorado On-Board Diagnostic (OBD) Stand-Alone Analyzer" to remove the obsolete language regarding readiness criteria for a vehicle's oxygen sensor, catalyst sensor and the allowable number of not-ready sensors for 2001 and newer vehicles and 2000 and older vehicles. The revised language now contains overall requirements for OBD readiness such that if the readiness evaluation indicates that a vehicle has more than one unset (not ready) readiness monitor, and the MIL is commanded off, then the inspection is automatically aborted with the reason printed out on the Vehicle Inspection Report.

VI. Conclusion

Our review of the State's Reg. No. 11 revisions, as presented above in sections IV and V, involved numerous revisions to Reg. No. 11 Parts A, B, C, D, F, Appendix A, the deletion of Appendix B, and overall formatting, correction of typographic errors and other non-substantive changes. Based on our review and evaluation discussed above, we propose that the Reg. No. 11 SIP revisions, submitted by the State in letters dated February 20, 2015, and May 14, 2018, sufficiently address applicable provisions in 40 CFR part 51, Subpart S, 40 CFR part 85, Subpart W, and that our approval is warranted.

VII. Consideration of Section 110(1) of the Clean Air Act

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further

progress towards attainment of a National Ambient Air Quality Standard or any other applicable requirement of the CAA. In view of the evaluations presented in sections IV and V above, the EPA proposes that the revisions to Colorado's Reg. No. 11 that are contained in the State's SIP submittals dated February 20, 2015, and May 14, 2018 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VIII. Proposed Action

The EPA is proposing approval of the February 20, 2015, submitted SIP revisions to Colorado's Regulation Number 11, Part A, Part B, Part C, Part F, Appendix A and the deletion of Appendix B. The EPA notes that revisions to Part F, sections VI.B.3 and VI.B.4 were also provided with the State's February 20, 2015 submittal. The EPA is not proposing action on these sections of Part F for the reasons noted above in section IV of this action.

In addition, the EPA is proposing approval of the May 14, 2018, submitted SIP revisions to Regulation Number 11, Part C, Part D, Part F and Appendix A.

IX. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in sections IV and V, above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

X. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 13, 2018.

Douglas Benevento,
Regional Administrator,
EPA Region 8.